

AO 243 (Rev. 09/17)

## MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

AUG - 5 2019

## SENTENCE BY A PERSON IN FEDERAL CUSTODY

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

<b>United States District Court</b>		District Court Eastern District Missouri	
Name (under which you were convicted): JURMONT CLARK		Docket or Case No.:	
Place of Confinement: FCC Forrest City-Low		Prisoner No.: 47343-044	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. JURMONT CLARK	

## MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: United States District for the Eastern District of Missouri, 111 S. 10th Street, 4th fl. St. Louis, Mo 63102

(b) Criminal docket or case number (if you know): 4:17-cr-00543-HEA-1

2. (a) Date of the judgment of conviction (if you know): August 9, 2018

(b) Date of sentencing: August 9, 2018

3. Length of sentence: 57 months imprisonment, followed by 2 year Supervised Release

4. Nature of crime (all counts): Unlawful Possession with intent to Distribute or Distribution of Cocaine Base; (2) Felon in Possession of a Firearm; and (3) Use of Possession of a Firearm during and in relation to a drug trafficking crime.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? I plead guilty to being a felon in possession of a firearm, and I plead not guilty to Distribution or Possession with intent to Distribute Cocaine base, and Use of Possession of a firearm during and in relation to a drug trafficking crime.

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

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8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: \_\_\_\_\_ N/A
- (b) Docket or case number (if you know): \_\_\_\_\_
- (c) Result: \_\_\_\_\_
- (d) Date of result (if you know): \_\_\_\_\_
- (e) Citation to the case (if you know): \_\_\_\_\_
- (f) Grounds raised: \_\_\_\_\_

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: \_\_\_\_\_ N/A
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_

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- (4) Nature of the proceeding: \_\_\_\_\_ N/A
- (5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_ N/A

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_ N/A

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** DENIAL OF SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING THE GUILTY PLEA STAGES OF THE PROCEEDING RENDERING THE PLEA AND WAIVER INVOLUNTARY, OR INVALID.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was appointed Federal Public Defender Charles Banks after I was arrested, after I told Public Defender Charles Banks ("Mr. Banks") what happen. See (Declaration of J. Clark, Para. 3-6).

Mr. Banks, in pressuring me to plead guilty to a single count of Unlawfully Possessing a firearm, and waiving my rights did not or fail to advise me:

(a). Counsel did not inform me of the True Elements of the Offense of Unlawfully Possession of a firearm. (Decl. of J. Clark Para. 10);

(b). Counsel did not adequately investigate whether the State and Federal Sentences would be served concurrently. (Decl. of J. Clark Para. 11);

(c). Counsel did not advise Me prior to entering the plea, whether I would be returned to the State after the Federal Proceeding, (Decl. of J. Clark Para. 12-13);

(d). Counsel incorrectly advised me that I would get my time, including the completion of my State Sentences. (Decl. of J. Clark at Para. 12).

(e). Counsel fail to advise me that as a consequence of pleading guilty that I would not receive any pre-trial jail credit and that the sentence would run consecutively from the State sentence I was serving. (See Decl. of J. Clark, Para.(s) 11-13)

(continue on Attached Page 1)

**(b) Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: I received ineffective assistance of Counsel, and the same lawyer who represented me in the plea also represented me at sentencing.

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO: MY GUILTY PLEA WAS NOT KNOWING, VOLUNTARY, OR INTELLIGENTLY ENTER WITH A UNDERSTANDING OF THE ELEMENTS OF THE OFFENSE IN LIGHT OF REHAIF V. UNITED STATES.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My plea of guilty was not knowingly, voluntarily, or intelligently made with a understanding of the crime charged of the Unlawful Possession of a Firearm. (See Declaration of J. Clark Para. 16).

On this record shows that I was not correctly informed by my Lawyer, the Government or the Court, that a element of the offense was that I "knowingly violated the status" element of the offense. (Decl. of J. Clark Para. 15) To make a informed decision.

I did not admit to Knowing violating the status element in my guilty plea, and I did not know that I fell into one of the category of persons to whom the federal offense applied to at the time of the offense.

I am actually innocent of the offense. I would not have plead guilty to the offense of the Unlawful possession of a firearm had I knew the true elements of the offense. (Decl. of J. Clark, para. 18 and 21)

I did not learn the true elements of the offense until the Supreme Court interpreted the elements of the offense of Unlawfully Possession of a firearm June 21, 2019. See (Decl. of J. Clark, Para. 23)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: This issue is based on a Retroactive Statutory interpretation by the United States Supreme Court that did not become available until after the time for filing a Direct Appeal had Expired so I had no opportunity to raise the issue on a Direct Appeal.

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

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**GROUND THREE:**

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:**

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Claims of Ineffective Assistance of Counsel are not reviewable of Direct Appeal and must be raised in a motion to Vacate sentence, and (2). This Second ground is based on a Intervening Supreme Court Decision on a matter of Statutory interpretation, that was not available during the time for filing a direct Appeal, for which I had no opportunity to raise the issue. (Dec. of J Clark, ¶.23) This motion is the first and only forum available to raise the issues.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: Federal Public Defender Charles Banks, 1010 Market St. St. Louis, Missouri 63101

(b) At the arraignment and plea:

Same as 15(a)

(c) At the trial:

N/A

(d) At sentencing:

Same as 15(a)

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

This motion should be deemed timely filed for Two (2) reasons:

First, this motion is timely filed within 1-year of the date my conviction became final. I was sentenced and the judgment rendered in this case on August 8, 2018. This motion is within 1 year of that date;

Finally, this motion should be deemed timely filed because it is filed within 1 year of a retroactive Supreme Court decision on a matter of Statutory interpretation that was decided on June 21, 2019. this motion is within 1 year of that date.

The Court should deem this motion timely filed.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:


A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence

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Therefore, movant asks that the Court grant the following relief: GRANT a evidentiary hearing, Appoint Counsel, and thereafter allow me to withdraw my guilty plea and/

or any other relief to which movant may be entitled.

  
\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 8/1/19  
(month, date, year)

Executed (signed) on 8/1/19 (date)

\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.